

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

FILED
RICHARD W. NAGE
CLERK OF COURT
JUN 16 PM 1:20
U.S. DISTRICT COURT
SOUTHERN DIST OHIO
WEST DIV CINCINNATI

WENDELL KENT FREEMAN)	Case No.: 22-cv-00203
)	
<i>Plaintiff,</i>)	
)	
vs.)	Plaintiffs Response in Opposition
)	to Defendants' Motion to Strike
)	Plaintiff's First Amended
)	Complaint
JONATHAN SPOLJARIC, in his)	
individual and official capacities, and)	
LAWRENCE COUNTY, a county or)	
other recognized territorial division)	
within the state of Ohio)	Jury Trial Demanded Herein
)	
<i>Defendants,</i>)	

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Wendell Kent Freeman, in *propria persona*, in the above-titled cause, who hereby files this, his Response in Opposition to Defendant's Motion to Strike his First Amended Complaint which plaintiff filed in accordance with Rule 15(a)(1)(B). This action brought by plaintiff is brought under U.S.C. Title 42 Section 1983 for civil rights violations specific to his 1st, 4th, and 14th Amendment rights.

I. PROCEDURAL HISTORY

1. Plaintiff Wendell Kent Freeman filed his Original Complaint with incorporated Exhibits in this honorable court on 4/13/22, *Dkt. #1*. Service was affected and Defendants Jonathan Spoljaric and Lawrence County responded, through counsel, with a Motion to Dismiss on 5/11/22, *Dkt. #7*.
2. Defendants served upon Plaintiff their Motion to Dismiss and an answer to Plaintiff's Original Complaint via regular first-class mail on this same date, 5/11/22,
3. On 6/6/22, Plaintiff filed with the clerk of this court and made personal service upon defendants' counsel his First Amended Complaint under FRCP 15(a)(1)(B), *Dkt. #11*.
4. On 6/11/22, defendants through counsel filed their Motion to Strike Plaintiff's First Amended Complaint, *Dkt. #13*, to which Plaintiff hereby files his Response in Opposition.

II. ARGUMENT

5. Plaintiff FREEMAN, since commencing this suit, has not and is not signed-up on the courts ECF system, and therefore believes that completion of service by defendants to plaintiff would be governed by Rule 5(b)(2)(C)¹, mailing of service.

¹ **FRCP 5 - Serving and Filing Pleadings and Other Papers** - FRCP 5(b)(2)(C) "...mailing it to the person's last known address—in which event *service is complete upon mailing*;"

6. Defendants filed their Motion to Dismiss plaintiff's original complaint relating to Rule 12(b)(6), through the courts ECF system on Wednesday, May 11, 2022. The Certificate of Service attests that this document was mailed to the Plaintiff, but lists no date for the mailing, *see Dkt. #7 – Certificate of Service*.

7. Defendants, through counsel, certify that said motion to dismiss was mailed to Plaintiff on 5/11/22, thereby completing service and, whereby, the 21- day response time for Plaintiff was activated and FRCP 15(a)(1)(B)² would be applicable.

8. In calculating the time for Plaintiff to file his First Amended Complaint per FRCP 15, plaintiff uses the completed service by mail date of Wednesday, May 11, 2022 as the start date. The calculated response time of the 21st day after completed service date falls on Wednesday, June 1, 2022.

9. Because service was affected by mailing to Plaintiff by Defendants' counsel under FRCP 5, in addition to this 21-day response time prescribed per FRCP 15, Plaintiff is granted an additional 3-days to file this **FIRST AMENDED COMPLAINT** per FRCP 6(d)³. In making a calculation of Plaintiff's time to file

² **FRCP 15 - Amended and Supplemental Pleadings – 15(a)(1)(B)** - if the pleading is one to which a responsive pleading is required, ***21 days after service*** of a responsive pleading or ***21 days after service*** of a motion under Rule 12(b), (e), or (f), whichever is earlier.

³ **FRCP 6 – Computing and Extending Time: for Motion Papers – 6(d) - Additional Time After Certain Kinds of Service.** When a party may or must act within a specified time after being served and service is made under ***Rule 5(b)(2)(C) (mail)***, (D) (leaving the

his First Amended Complaint, his deadline would therefore be Saturday, June 4, 2022. Because the court is not open on this day, the next business day would apply, extending the valid filing date to Monday, June 6, 2022, at the close of the court's business day, in accordance with Rule 6(a)(1)(C)⁴.

10. On Monday, June 6, 2022, Plaintiff, in person, filed in this honorable court his First Amended Complaint, *Dkt #11*, and then personally served the same upon counsel for the defendants later that same day. Plaintiff thereby timely made the filing and service of his First Amended Complaint under Rule 15(a)(1)(B).

III. CONCLUSION

11. Defendants filed their Motion to Dismiss plaintiff's original complaint under Rule 12(b)(6) on 5/11/22. Counsel for defendants allege that they mailed a copy of the same to plaintiff this same date and thereby completed service per FRCP 5(b)(2)(C).


clerk), or (F) (other means consented to), *3 days are added after the period would otherwise expire under Rule 6(a).*

⁴ **FRCP 6 – Computing and Extending Time: for Motion Papers – FRCP 6(a)(1)(C)**– “... include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.”

12. Defendants, when calculating the time for plaintiff to file any response or reply to said filing in accordance with Rule 6(a), failed to calculate the additional 3 days added to the timeline as provided for under Rule 6(d).

13. Plaintiff filed his First Amended Complaint on Monday, June 6, 2022. Plaintiff, in good faith, believes that this filing was completed timely and as directed by and in accordance with the designated Rules.

WHEREFORE, in light of the foregoing, Plaintiff hereby prays that defendants Motion to Strike Plaintiff's First Amended Complaint be denied, by this honorable court.

A handwritten signature in black ink, reading "Wendell Kent Freeman", is written over a horizontal line.

Wendell Kent Freeman

1392 County Rd. 1

Southpoint, OH 45680

Email:

In Proper Person

CERTIFICATE OF SERVICE

I, Kent Freeman, Plaintiff in this matter, hereby certify that a copy of the foregoing document, Plaintiff's Response in Opposition to Defendant's Motion to Strike Plaintiff's First Amended Complaint, was filed in this honorable court in person on, June 16, 2022. and that a copy of the same was personally served this same day upon:

**Randall Lee Lambert, and
Cassaundra L. Sark**
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ATTORNEYS FOR DEFENDANTS:
Jonathan Spoljaric
Lawrence County


Wendell Kent Freeman

Plaintiff, *Pro Se*